

# ARNOLD & PORTER

Robert S. Litt  
Robert\_Litt@aporter.com  
202.942.6380  
202.942.5999 Fax  
555 Twelfth Street, NW  
Washington, DC 20004-1206

March 25, 2003

VIA HAND DELIVERY

MUR # 5357

April Sands, Esq.  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463

Re: Pre-MUR 412/ Centex Corporation

Dear Ms. Sands:

Attached to this letter are two letters, dated February 27, 2003 and March 24, 2003, submitted to the Federal Election Commission on behalf of our client Centex Corporation. With this writing and the notarized declaration attached below, we ask that you please treat the two letters as a complaint pursuant to Commission regulations.

Sincerely,



Robert S. Litt

Attachments

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

2003 MAR 25 P 12:22

APR 1 2003 10:40 AM

ARNOLD & PORTER

I, the undersigned, certify that the information contained in the attached two letters is true and accurate to the best of my knowledge.

RL

Sworn to me and subscribed before me on this 25<sup>th</sup> day of March, 2003,  
by Robert Litt.

Alva Hurd Jenkins  
Notary Public

My Commission expires: \_\_\_\_\_

~~My Commission Expires November 22, 2004~~

23 " 04 " 406 " 3105

# ARNOLD & PORTER

Robert S. Litt  
Robert\_Litt@aporter.com  
202.942.6380  
202.942.5999 Fax  
555 Twelfth Street, NW  
Washington, DC 20004-1206

March 24, 2003

**VIA HAND DELIVERY**

**SETTLEMENT COMMUNICATION**  
**PURSUANT TO F.R.E. 408**

April Sands, Esq.  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463-0001

2003 MAR 24 P 5: 10

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Re: **Pre-MUR 412/ Centex Corporation**

Dear Ms. Sands:

The purpose of this letter is to supplement our letter to you dated February 27, 2003, which set out certain facts regarding potentially improper reimbursements of employees by Centex-Rooney Construction Co., Inc. ("Rooney") for political contributions the employees made to federal candidates, political parties, and political committees. We will be producing relevant documents to you separately.

As stated in our previous letter, Centex Corporation ("Centex") retained us to investigate potential violations of federal election laws that may have occurred at its subsidiary, Rooney.<sup>1</sup> At the time of our initial letter, this investigation was ongoing. Since that time, we have completed our interviews of employees who may have had information about the reimbursement scheme.<sup>2</sup> We also have reviewed additional documents provided to us by Rooney or turned over to us by employees when they were interviewed. At this time, our investigation is largely complete and has revealed no additional information that materially changes the facts as they were set forth in our original letter.

<sup>1</sup> Rooney is a wholly owned subsidiary of Centex Construction Group, Inc., which is, in turn, a wholly owned subsidiary of Centex Corporation.

<sup>2</sup> None of the employees interviewed subsequent to our initial letter appear to have been reimbursed for any contribution to a federal candidate, political committee, or political party.

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April Sands, Esq.  
March 24, 2003  
Page 2

Centex has moved quickly and decisively to address the problems at Rooney. Mr. Moss's employment has been terminated, and Mr. Esporin has been relieved of his duties as CFO of Rooney and co-CFO of Centex Construction Group, Inc. Centex is seeking reimbursement with interest for the amount of the bonuses, including the gross up for taxes, from each employee who made contributions and received reimbursement through a discretionary management bonus paid to the employee. Full reimbursement has already been obtained from Mr. Moss, who received over forty percent of the improper bonuses, by way of a set-off against funds due him. In addition, each employee involved will be subject to further disciplinary action by the company. As we previously advised you, Centex has initiated a comprehensive review of its political contributions and government affairs policies and procedures to implement additional safeguards that will be designed to prevent similar violations of law and of its policies in the future.

We reiterate our request on behalf of Centex that the Office of General Counsel initiate an enforcement proceeding with respect to the improper activities at Rooney; that the Commission find reason to believe that Rooney has violated 2 U.S.C. §§ 441b(a) and 441f, but that such violations by Rooney were not knowing and willful; and that the Office of General Counsel obtain the Commission's authorization to engage in pre-probable cause conciliation with Rooney pursuant to 11 C.F.R. § 111.18(d).

We look forward to working with you, your staff, and the Commission to resolve this matter. Please feel free to contact Mr. Litt (202.942.6380) or Ms. Cochran (202.942.5228) if you have any questions.

Sincerely,



Robert S. Litt  
Martha L. Cochran

I declare under penalty of perjury that the foregoing is true and correct. Executed on MARCH 24, 2003.



23 04 406 3107

# ARNOLD & PORTER

Martha L. Cochran  
Martha\_Cochran@aporter.com

202.942.5228  
202.942.5999 Fax

555 Twelfth Street, NW  
Washington, DC 20004-1206

February 27, 2003

**SETTLEMENT COMMUNICATION**  
**PURSUANT TO F.R.E. 408**

Rhonda L. Vosdingh  
Associate General Counsel  
Enforcement  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463-0001

PRE-MUR # 412

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
2003 FEB 27 P 5:01

Re: Centex Corporation

Dear Ms. Vosdingh:

We represent Centex Corporation ("Centex"), a publicly traded company headquartered in Dallas, TX. The purpose of this letter is to notify the Federal Election Commission (the "Commission") of potential violations of the Federal Election Campaign Act of 1971, as amended, that may have occurred at Centex-Rooney Construction Co., Inc. ("Rooney"), which is a subsidiary of a Centex subsidiary, Centex Construction Group, Inc. ("CCG"). As set forth below, it appears that between May 1998 and May 2002, certain employees at Rooney were reimbursed out of corporate funds for federal political contributions, including a gross-up for tax liability. These activities were directed by Bob L. Moss, the former Chairman of Rooney and former Chairman and CEO of CCG, who was the most senior Rooney official to participate in these activities and was the principal financial beneficiary of the activities. Gary Esporin, the former CFO of Rooney and former co-CFO of CCG, acting under Mr. Moss's direction, facilitated these activities.<sup>1</sup> It is unclear how many of the employees knew that they were reimbursed for these contributions. There is no evidence to suggest that any political candidate or committee was aware that Rooney reimbursed its employees for their contributions or that the payors on the contribution checks were conduits. These

<sup>1</sup> It appears that the reimbursements began while Mr. Moss was Chairman and CEO of Rooney and Mr. Esporin was CFO of Rooney and continued after both were promoted to positions with CCG. After moving to CCG, Mr. Moss retained the title of President of Rooney, and Mr. Esporin retained his title of CFO of Rooney. As discussed below, it appears that all funds for reimbursement came from the bonus pools at Rooney.

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activities (the "improper activities") were in violation of law and violated Centex's firm commitment that "We conduct our business in accordance with both the letter and the spirit of all applicable laws." No officials at Centex were aware that employees of Rooney were being reimbursed for personal political contributions as described below.

At this time, our investigation of the matter is continuing. In the interim, Centex has begun to take remedial efforts under the supervision of its General Counsel, CEO, and Board of Directors. Mr. Moss's employment has been terminated, and Mr. Esporin has been relieved of his duties as co-CFO of CCG and as CFO of Rooney. Centex is evaluating the nature and extent of the improper activities and will take additional disciplinary action, as appropriate, after it completes its internal review. Further, Centex has initiated a comprehensive compliance review of its policies and procedures to implement additional safeguards that will be designed to prevent similar violations of law and of its policies and procedures in the future. The investigation being conducted also has been brought to the attention of Centex's Audit Committee.

We request on behalf of Centex that the Office of General Counsel initiate an enforcement proceeding with respect to the improper activities at Rooney; that the Commission find reason to believe that Rooney has violated 2 U.S.C. §§ 441b(a) and 441f, but that such violations by Rooney were not knowing and willful; and that the Office of General Counsel obtain the Commission's authorization to engage in pre-probable cause conciliation with Rooney pursuant to 11 C.F.R. § 111.18(d).

Centex is committed to conducting all of its business, including any political activity by the company, its subsidiaries, its officers, or employees in a lawful and ethical manner. In that spirit, Centex is ready and willing to cooperate fully with the Commission and its staff in this matter.

## I.

### BACKGROUND

In January 2003, the CEO of Centex directed the General Counsel of Centex to undertake an investigation of information that suggested that employees of Rooney may have been reimbursed with corporate funds for individual political contributions. On January 27, after an initial review, Centex retained Arnold & Porter to investigate. In the four weeks since beginning the investigation, Arnold & Porter has obtained and reviewed documentary evidence including: (a) internal Rooney documents showing the amounts

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paid in discretionary management bonuses; (b) copies of personal checks written by employees to candidates for federal office; (c) documents relating to political contribution activity obtained from witnesses interviewed or their counsel; and (d) online federal and state campaign disclosure reports.

To date, we have interviewed a number of employees who had relevant information. It appears that the following individuals we have interviewed made federal election contributions: Bob Moss, the former Chairman of Rooney and Chairman and CEO of CCG; Gary Esporin, the former CFO of Rooney and co-CFO of CCG; Bruce Moldow, Executive Vice President and General Counsel of Rooney and Senior Vice President and co-Chief Legal Officer for CCG; Al Petrangeli, President of Rooney; Raymond Southern, Vice Chairman and CEO, Rooney; Gary Glenewinkel, Executive Vice President and COO – South Florida Operations for Rooney; Ted Adams, Senior Vice President and Criminal Justice Division Manager, Rooney; Larry Casey, Senior Vice President Marketing and Sales, Rooney; and David Hamlin, Senior Vice President Estimating, Rooney. All of the individuals listed above made at least one contribution to a candidate for federal office and received discretionary management bonuses that accounted for the contributions.

Within the next week, we plan to interview certain other individuals whom we believe were reimbursed for federal political contributions. Other employees who may have relevant information also will be interviewed.

We should note in particular that Mr. Esporin provided extensive information and documentation relating to matters described in this letter, and he was forthcoming about his role in facilitating the improper activities. He has indicated his willingness to continue to cooperate with the company's inquiry.

## II.

### INVESTIGATION RESULTS TO DATE

Rooney is a construction company with commercial building projects primarily in the state of Florida. CCG operates as the umbrella organization for regional construction units, including Rooney. Bob Moss joined what was then called Frank J. Rooney Construction (now known as Centex-Rooney) in 1986 as Chairman, President, and CEO. In early 2000, Mr. Moss was promoted to the position of Chairman and CEO of CCG while retaining his title of Chairman at Rooney.

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During the relevant period, Rooney employees participated in several incentive compensation plans that paid bonuses to employees. Rooney's incentive compensation plans were based on a bonus pool that is determined by the company's profitability. The CEO of Rooney identified the employees who were eligible for participation in the plans. Some employees received bonuses based on a percentage of the total bonus pool; others received bonuses based on performance of their business unit, project performance, or other factors.

At the end of each fiscal year, the CFO of Rooney determined the amount of the bonus pool and, together with the CEO, calculated the amount of individual bonuses. A percentage of the bonus pool was reserved for discretionary bonuses. Mr. Moss reviewed and adjusted the bonuses, approved them, and forwarded them for checks to be issued. The entire amount of the bonuses was treated as compensation for financial accounting purposes.

In approximately 1997, Mr. Moss, then the CEO of Rooney, began to encourage employees of Rooney to make political contributions as a means of relationship-building. These employees were encouraged to inform either Mr. Moss or Mr. Esporin of their contributions and to send copies of contribution checks to Mr. Moss or Mr. Esporin. Copies of checks generally were given to Mr. Esporin or, in some cases, to Mr. Moss (who forwarded them to Mr. Esporin). Mr. Esporin calculated amounts that would reimburse each employee for his contributions and grossed up the amounts to offset any tax liability. These amounts were listed in a bonus spreadsheet under a separate column designated "discretionary management bonuses" and were added to the bonus amounts the employee otherwise would have received from the incentive plan. Mr. Moss approved these discretionary management bonuses. At present, it is not clear whether any employees were separately informed of the amount of this discretionary management bonus. Mr. Moss was the largest recipient of these discretionary management bonuses.

In fiscal years 1998 – 2002,<sup>2</sup> ten employees of Rooney<sup>3</sup> made contributions to federal candidates and received discretionary management bonuses approved by Mr. Moss. A review of records maintained by Mr. Esporin showed that the following

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<sup>2</sup> Centex's fiscal year runs from April 1 to March 31.

<sup>3</sup> We note that Mr. Moss, Mr. Esporin, and Mr. Moldow became officers of CCG beginning in January 2000. However, the bonus funds allocated for reimbursement of their contributions continued to come from the Rooney incentive compensation pool.

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individual federal political contributions were made, that the information and related copies of checks or other documents were sent by the individuals either to Mr. Moss or Mr. Esporin, and that this information was used to establish the discretionary management bonus amounts for these individuals.<sup>4</sup>

Bob Moss: former Chairman of Rooney and former Chairman and CEO of CCG

\$1,000 to Graham for Senate on 7/25/96<sup>5</sup>  
\$500 to McCollum for Senate on 12/14/97  
\$500 to McCollum for Senate on 12/14/97<sup>6</sup>  
\$500 to Graham for Senate on 1/30/98  
\$1,000 to Graham for Senate on 7/9/98<sup>7</sup>  
\$1,000 to Graham for Senate on 9/16/98<sup>8</sup>  
\$1,000 to Shaw for Congress on 4/7/99  
\$1,000 to McCollum for Senate on 4/8/99  
\$5,000 to Fla. Republican Party Federal Account on 5/15/99  
\$1,000 to Bush for President on 6/17/99  
\$500 to McCollum for Senate on 11/19/99  
\$1,000 to McCollum for Senate on 12/28/99<sup>9</sup>  
\$5,000 to Fla. Republican Party Federal Account on 3/27/00  
\$500 to Shaw for Congress on 4/28/00<sup>10</sup>  
\$20,000 to Republican National Committee on 5/11/00<sup>11</sup>

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<sup>4</sup> As part of the investigation, we cross-checked records of contributions with FEC candidate and committee reports. Any discrepancies are noted individually.

<sup>5</sup> Contribution was reimbursed in FY 1998.

<sup>6</sup> Contribution was made by Mr. Moss's wife, Sandra Moss.

<sup>7</sup> No record of contribution receipt in candidate filings.

<sup>8</sup> Check records indicate contribution was made by Mr. Moss's wife, Sandra Moss. The candidate's filing lists the contribution as coming from Mr. Moss. The campaign subsequently reimbursed Mr. Moss \$500.

<sup>9</sup> \$500 of the contribution was reattributed to Mr. Moss's wife, Sandra Moss.

<sup>10</sup> Check records indicate Mr. Moss made the contribution. The campaign reported the contribution as made by Mr. Moss's wife, Sandra Moss.

<sup>11</sup> Contribution was to the RNC Federal account.

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Moss continued:

\$500 to Shaw for Congress on 10/03/00

\$175 to Shaw for Congress 7/18/01

\$2,000 to Shaw for Congress on 3/20/02<sup>12</sup>

Gary Glenewinkel: Executive Vice President and COO – South Florida  
Operations, Rooney

\$500 to Corrine Brown for Congress on 10/15/99<sup>13</sup>

\$500 to McCollum for Senate on 11/23/99

\$500 to Bush for President on 11/04/99<sup>14</sup>

\$500 to ABC/PAC on 12/09/99

\$500 to Gallagher for Senate on 2/14/00

\$1,000 to Shaw for Congress on 5/11/00

\$500 to McCollum for Senate on 3/21/00<sup>15</sup>

\$100 to Bush for President on 9/28/00<sup>16</sup>

\$1,000 to Shaw for Congress on 10/11/00<sup>17</sup>

\$100 to ABC/PAC on 3/21/01<sup>18</sup>

\$1,000 to Shaw for Congress on 3/20/02

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<sup>12</sup> Check records indicate Mr. Moss made the contribution. The campaign reported the contribution as made by Mr. Moss's wife, Sandra Moss.

<sup>13</sup> Contribution was made by D.J. McGlothorn, a Rooney employee. Mr. Glenewinkel wrote a check to reimburse Mr. McGlothorn and submitted a copy of this check for inclusion in his FY 2000 bonus calculation.

<sup>14</sup> Contribution was made by D.J. McGlothorn, a Rooney employee. Mr. Glenewinkel wrote a check to reimburse Mr. McGlothorn and submitted a copy of this check for inclusion in his FY 2000 bonus calculation.

<sup>15</sup> Contribution was made by Mr. Glenewinkel's wife, Kathryn Young.

<sup>16</sup> Contribution did not require individual itemization in disclosure report.

<sup>17</sup> Contribution was made by Mr. Glenewinkel's wife, Kathryn Young.

<sup>18</sup> Contribution did not require individual itemization in disclosure report.

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Gary Esporin: former CFO of Rooney and former co-CFO of CCG

\$500 to Gallagher for Senate on 2/14/00  
\$500 to McCollum for Senate on 11/19/00  
\$500 to Shaw for Congress on 3/22/02

Bruce Moldow: Executive Vice President and General Counsel, Rooney and  
Senior Vice President and co-Chief Legal Officer, CCG

\$500 to McCollum for Senate on 11/19/99  
\$500 to Gallagher for Senate on 2/15/00  
\$500 to Shaw for Congress on 3/20/02

Raymond Southern: Vice Chairman and CEO, Rooney

\$1,000 to Bush for President on 6/25/99  
\$500 to Gallagher for Senate on 2/15/00

Michael Wood: Executive Vice President and COO – North Florida Operations,  
Rooney

\$500 to McCollum for Senate on 12/14/97  
\$500 to McCollum for Senate on 9/27/98

Ted Adams: Senior Vice President and Criminal Divisions Manager, Rooney

\$500 to the Bush for President campaign on 11/04/99

Larry Casey: Senior Vice President Marketing and Sales Rooney

\$500 to Gallagher for Senate on 2/14/00<sup>19</sup>

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<sup>19</sup> Based on an interview with Mr. Casey, it appears that he did not submit a copy of his check to Mr. Esporin or Mr. Moss. Instead, he gave an original check to Mr. Moss after Mr. Moss requested that Mr. Casey contribute to the Gallagher campaign. It appears that Mr. Moss submitted a copy of Mr. Casey's check to Mr. Esporin for reimbursement without the knowledge of Mr. Casey.

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David Hamlin: Senior Vice President Estimating, Rooney

\$500 to Gallagher for Senate on 2/15/00<sup>20</sup>

Albert Petrangeli: President, Rooney

\$500 to Weldon for Congress on 3/21/00

We should emphasize that the above information is preliminary and may be subject to change as we continue our investigation.<sup>21</sup>

The total amount of Rooney's bonus pool was approved each year by the parent company, but individual bonuses did not need to be, and were not, approved by the parent. Moreover, based upon our inquiry to date, it appears that no officials at Centex were aware that employees of Rooney were being reimbursed for personal political contributions as described above. As noted, when Centex management learned of the improper activities, they promptly ordered it to stop and initiated an investigation.

### III.

#### CONCLUSION

All of the evidence suggests that the improper activities described above were a violation of law and contrary to Centex policy. Centex has acted firmly and decisively to investigate the activity, institute appropriate disciplinary action, develop enhancements to existing policies and procedures, and report the activity to the Commission. We submit

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<sup>20</sup> Based on an interview with Mr. Hamlin, it appears that he did not submit a copy of his check to Mr. Esporin or Mr. Moss. Instead, he gave an original check to Mr. Moss's secretary after Mr. Moss requested that Mr. Hamlin contribute to the Gallagher campaign. It appears that Mr. Moss submitted a copy of Mr. Hamlin's check to Mr. Esporin for reimbursement without the knowledge of Mr. Hamlin.

<sup>21</sup> In addition, as part of the course of conduct described in this letter, Mr. Moss and other individuals were reimbursed for political contributions made at the state and local level by Rooney and certain other subsidiaries of CCG. The company's inquiry also encompasses these contributions, and the company intends to take appropriate action with respect to any such contributions that were improper under applicable law.

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February 27, 2003  
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to the Commission that it should find reason to believe that Rooney has violated 2 U.S.C. §§ 441b(a) and 441f to the extent described herein but that the violations were not knowing and willful. We ask that the Commission authorize the Office of General Counsel to engage in pre-probable cause conciliation with Rooney.

As noted above, our own investigation into this matter is continuing. We will submit additional information to the Commission as appropriate, and we would be pleased to discuss any of the matters described in this letter with the staff or the Commission. Please feel free to contact Mr. Litt (202.942.6380) or Ms. Cochran (202.942.5228) if you have any questions.

Sincerely,



Robert S. Litt  
Martha L. Cochran

23 04 406 316